Public Prosecutor v Ramasamy a/l Sebastian

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 37 OF 1988
THEAN J AND CHAO HICK TIN JC
26 SEPTEMBER 1990

Criminal Procedure — Statements — Voluntariness — Inducement threat or promise — What words will constitute an inducement or threat — Recording of subsequent statements — Whether warning has to be given — Criminal Procedure Code (Cap 68, 1985 Ed), s 122(5) & (6)

Criminal Law — Culpable homicide — Sudden fight — Circumstances giving rise to sudden fight — Penal Code (Cap 224, 1985 Ed), s 300

The accused, the victim and two others were working at a construction site and shared the same cubicle at the temporary quarters at the site. One night, at about 10pm, all four were drinking and playing cards. A quarrel developed between the accused and the victim. The accused was heard to say that he was going to stab the accused. He was seen picking up a knife, catching hold of the victim and stabbing him three times. The accused was disarmed and an ambulance was called. The ambulance arrived at about 11.30pm and the victim was pronounced dead by the ambulance officer. The police arrived at 11.41pm. The police officers stated that the accused's breath smelled of alcohol, but he could walk steadily without support. Nor did he fall asleep or vomit in the police car.

The accused was escorted to CID at about 3.30pm. From 5.05 to 6.15am the accused gave a s 122(6) statement to the investigating officer. Subsequently, on 2 December he gave a s 122(5) statement. That was followed by two further statements on 4 and 5 December. The accused claimed that none of the statements were given voluntarily. During the recording of the s 122(5) statements the IO was repeatedly warned that he should tell the truth and not lies. The interpreter told him that he 'better tell the truth'. No warning was given to him prior to the recording of any of the s 122(5) statements.

The accused's main contention was that because of intoxication, he was not able to form the intention to inflict the injuries that caused the death of the victim.

Held, convicting the accused of culpable homicide not amounting to murder:

(1) The fact that a police officer reminds a witness that he should tell the truth and not tell lies cannot constitute a threat or an inducement.

(2) In some cases 'you better tell the truth' could amount to a threat or an inducement. But in the circumstances of the present case, they did not suggest to the accused that he would gain any advantage by giving the statement.

(3) The investigating officer had administered the warning for the s 122(5) statement on the first occasion, but not on the subsequent occasion. However, on the subsequent occasions, it was not necessary to repeat the warnings as they were a continuation of the first statement.

(4) The fourth exception to s 300 is for killings without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. In this case, the fight occurred suddenly and there was no question of there being premeditation on the part of any party. To invoke this exception it is immaterial which party offers the provocation or commits the first assault. In the circumstances of this case, exception 4 applies.

Legislation referred to
Criminal Procedure Code (Cap 68, 1985 Ed) s 122(5), (6)
Penal Code (Cap 97, 1985 Ed) ss 85(2), 86(2), 300

Chan Seng Onn (Dy Senior State Counsel) for the Public Prosecutor.
Shyam Kumar for the accused.

Cur Adv Vult

Chao Hick Tin JC (delivering the judgment of the court): The accused is charged before us on the following charge:

> You Ramasamy a/l Sebastian, M/37 yrs
> Nric No: 7722183-FOM
>
> are charged that you, on or about the 30th day of November 1987, at about 11.26pm, at Room B-11 of the workmen's quarters at the MRT Project No 305, Koh Sek Lim Road, Singapore, committed murder by causing the death of one Neelamegam a/l Karupian, male 36 years, and you have thereby committed an offence punishable under section 302 of the Penal Code, Chapter 224.

Evidence led by the prosecution is this. At the relevant time both the accused and Neelamegam (the deceased) were working for a sub-contractor of Hyundai Construction at the MRT project No 305 worksite at Koh Sek Lim Road. Both of them together with two others, Muniandy a/l Annamalai and Rajendran a/l Paramasivan (who worked for another sub-contractor), shared the same cubicle, No B-11, on the second level of the temporary quarters erected at the said site.

On the morning of 30 November 1987 all four men left for work. Rajendran (PW9) and Muniandy (PW8) returned after their work at about 9.10pm. Then the accused and Neelamegam had already returned: Neelamegam was cooking and the accused was sitting on a bunk in the cubicle having a drink. The accused was also smoking. Muniandy helped Neelamegam by going down to fetch a pail of water. Thereafter Muniandy went to take his bath. Upon his return Neelamegam and Rajendran went to take their bath. The last to do so was the accused. In the meantime, while Rajendran and Neelamegam were having their bath, the accused gave Muniandy $10 to buy drinks from a mobile vendor at the site. Muniandy bought a big bottle of ABC Stout, a can of ABC Stout and a small bottle of 3-star wine (320ml).

At about 10.25pm to 10.30pm, they began to consume the drinks. The accused drank the big bottle of ABC stout, Rajendran and Neelamegam shared the bottle of 3-star wine and Muniandy consumed the can of stout. It was at this time that the four of them sat down on the floor to play a card game called 'throop',

with Rajendran (PW9) partnering the accused and Muniandy (PW8) partnering Neelamegam. When the first game was over Neelamegam counted the cards of his as well as his partner's (Muniandy's) and said that they had won. The accused, not being satisfied, counted his and Rajendran's cards and said instead that they had won. The two started to quarrel but was stopped from quarrelling further by Muniandy.

Notwithstanding this dispute they carried on and played a second game. While the second game was still not completed, the accused placed his cards on the floor, got up and went to the stove and took some food and placed it on a plate. He started eating. When he was about to sit on the floor to resume the game Neelamegam mixed up all the cards. The accused, seemingly annoyed, asked Neelamegam why he did that. In reply, Neelamegam remarked, 'Are you going to play with a hand soiled with curry?' They again argued with each other. At that point both Muniandy and Rajendran joined in to say that perhaps they should stop the game and everyone should have their meal. Nevertheless, the accused and Neelamegam continued to argue and quarrel with each other. This lasted for about 20 minutes. When they stopped the card game everyone had consumed their drinks except for the accused, who had some drink left in the cup; the stout bottle was, however, empty. At a certain point of their argument, the accused went out of the cubicle to urinate but soon returned. At that moment, Muniandy was having his meal sitting on floor. The accused scolded him and asked how it was that Neelamegam had mixed up all the cards. Neelamegam intervened and said that the quarrel was between him and the accused and had nothing to do with Muniandy. The accused repeatedly harped on the question on the mixing of the cards and Neelamegam replied that 'you are always like that when you have drinks.' Both of them quarrelled further. At that point in time Rajendran was seated on the bunk smoking and looking out of the window. Then the accused was heard to have said that he would stab Neelamegam. Rajendran turned his head back and saw the accused taking a knife from the rack and with his left arm caught hold of Neelamegam by his forehead and with his right hand stabbed Neelamegam with the knife twice in the left shoulder region close to the neck. Rajendran quickly went forward to try to wrench the knife from the accused's right hand. The accused had then stabbed Neelamegam a third time. Rajendran caught hold of the accused's right hand and told him to drop the knife; but he refused so much so that Rajendran had to punch him three times before he could wrench the knife from the accused. Rajendran placed the knife on the stove. Muniandy who had also stopped eating, came forward to help Neelamegam and asked Rajendran to call for an ambulance.

The ambulance arrived at about 11.30pm. The ambulance officer (PW5) and the ambulance attendant (PW2) went straight up to cubicle No B-11. Neelamegam was lying on his back with his head resting on a pillow. The accused was lying by the side of Neelamegam with half of his body covering the left side of Neelamegam's body. After some persuasion, the accused got up from that lying position. He got up on his own without any difficulty, though according to the ambulance attendant he was swaying from side to side. The ambulance attendant also said that his breath smelled of alcohol. The ambulance officer then examined Neelamegam. By then there was no heart-beat and no respiration. She bandaged the three stab wounds and pronounced Neelamegam dead at 11.40pm.

When the accused got up from the lying position, the ambulance officer heard him to have said in Tamil words which mean 'I stabbed him with a knife. I stabbed him in anger. Take me away. One must go to the gallows if one has killed'. These words were uttered spontaneously by the accused without any prompting by anyone. According to the ambulance officer, the accused had no difficulty in getting up from the lying down position although after that he appeared a little restless pacing back and forth. The accused was not vomitting and neither did he pass out. There is no evidence that he was unable to control his urine or faeces. Muniandy also said he heard the accused saying something when he got up from the laying position but he could not remember what was said. Rajendran said that after the accused got up the latter scolded Rajendran to the effect that 'you were the one who took knife from me. Your finger prints are on the knife. You are also involved. You punched me and Muniandy is a witness.'

At about 11.45pm, the police arrived. PC Sim Kok Kian (PW6) met the ambulance officer (PW5) and three Indian persons, ie the accused, Muniandy, and Rajendran at the corridor outside cubicle B-11. When PC Sim saw the accused the latter said something to PC Sim and at the same time also offered both his hands to PC Sim. PC Sim said that the accused's breath smelled of alcohol. PC Sim, accompanied by PC Soh Eng Seng (PW7), brought the accused down to the ground level by holding the accused's elbow but he was not supporting the accused as the accused could walk very steadily. The accused did not stumble; neither was his speech slurred. Thereafter he was placed in the police vehicle. PC Soh also said that the accused walked to the car steadily though the accused's breath smelled of liquor. At no time during the period when he was waiting in the vehicle did the accused fall asleep; neither did he vomit in the vehicle.

Inspector Lim Kwang Meng (now of the rank of ASP) of the Special Investigation Section, Criminal

Investigation Department (CID), arrived at the scene of crime at about 12.55am on 1 December 1987. Having completed his investigations, he brought the accused back to the CID, arriving at the CID at 3.30am. Inspector Lim informed the accused that he had been arrested for the murder of Neelamegam. At 4.05am, Inspector Lim instructed Cpl Chng Leng Hock and PC Low Peng Yeong to escort the accused to the General Hospital for a medical examination. He was examined for, among other things, alcoholic intoxication. On this aspect, the doctor found that there was no smell of alcohol in his breath; his speech was not slurred; his heart and chest were normal; his abdomen was soft and his gait was steady. His blood taken at that time showed 71mg of ethanol per 100ml of blood. The accused was brought back to Inspector Lim at his office at 5am.

The accused gave his first statement to Inspector Lim at 5.05am to 6.15am. That was the s 122(6) statement. Subsequently, on 2 December 1987, the accused gave a s 122(5) statement to Inspector Lim. That was followed by two further statements on 4 December 1987 and 5 December 1987. The accused challenged the admissibility of all the four statements on the ground that it was procured by inducement or promise. There is no allegation that he was assaulted while in police custody. There is no allegation that any threat of force was brought to bear upon him.

Trial within a trial

The prosecution sought to admit in evidence the four statements made by the accused. The four statements were marked for identification purposes as P35I, P44I, P45I and P46I. A trial-within-a-trial to determine the admissibility of the four statements was held.

In relation to the s 122(6) statement the accused alleged that at the time when he was giving the statement he felt hungry and giddy. He said he told the Inspector about his hunger though he could not remember whether or not he told the Inspector that he did not have his dinner yet the previous night.

In relation to all the four statements the main complaint of the accused was that the statements were not given voluntarily as they were given on account of inducement or promise held out by both Inspector Lim (PW10) and the interpreter, Mrs Jaya Letchumi (PW 13). Inspector Lim was alleged to have told the accused, through the interpreter, that if he should admit to the offence, he would receive a reduced sentence.

There was also another complaint to the effect that during the recording of the s 122(5) statements, Inspector Lim had repeatedly warned the accused in Malay that he should tell the truth and not lies (*jangan cakap bohong, cakap betul betul* or words to that effect). The accused also alleged that, when the second s 122(5) statement was recorded, Mrs Letchumi had said, 'You better tell the truth'. The accused also said that in relation to all the three s 122(5) statements no warning was administered to him before recording commenced.

Inspector Lim told the court that at no time prior to the recording of the s 122(6) statement did the accused inform him that he was hungry. From his investigation at the scene of crime he had the impression or was given to understand the accused had his dinner. He said that there was nothing in the conduct of the accused which would lead him to believe that the accused was not fit to give a statement. Inspector Lim agreed that if he, in fact, was told that the accused had his last meal at 12 noon the previous day he would probably have got food for him first before recording the statement. But he emphasized that at no time did the accused tell or complain to him that he was hungry or dizzy. Mrs Letchumi, the interpreter who was present when recording of all the four statements took place, said that when the recording of the s 122(6) was made the accused appeared all right although she could not now remember if the accused was dizzy or restless. In our mind it is most unlikely that a person who has just killed another and who is facing a capital charge would be concerned about hunger if he was in fact hungry. We, therefore, reject this allegation.

Inspector Lim told the court that in respect of the s 122(6) statement, the accused volunteered it after the warning was administered to him and interpreted by Mrs Letchumi. It was recorded precisely as narrated by the accused through the interpreter.

Both Inspector Lim and Mrs Letchumi were emphatic in denying that any promise or inducement was uttered in the course of their recording of the four statements. Inspector Lim said that the accused had been very cooperative and Mrs Letchumi said that the accused was forthright in his answers. On the other hand, the testimony of the accused before us as to the events relating to the recording of the statements is to say the least, vague and in some instances, confusing. Many things he could not remember yet he was sure that the promise of a reduced sentence was made. We find that there was really no need for Inspector Lim or the interpreter to make any such promise and none was proffered. The accused was cooperative; in all probability he was very remorseful of what happened the previous night. We find that he voluntarily gave the statements to the investigating officer who duly recorded what he said.

As regards the allegation that Inspector Lim told him in Malay to tell the truth, (*jangan cakap bohong, cakap betul betul* or words to that effect), we find that

even if that allegation be true, which is denied by Inspector Lim, we do not see how that expression as such could amount to a threat or inducement. The accused was not able to give details of the context in which this Malay expression was used which would show in that context it could amount to a threat or an inducement. In our view, the fact that a police officer reminds a witness that he should tell the truth and not tell lies cannot, in truth, constitute a threat or an inducement. But even if it could be construed to amount to a threat or inducement, we find that in the circumstances surrounding the giving of the statement that utterance did not really have any effect on the accused's willingness to give the statement. The evidence shows that this utterance was not made prior to the giving of a statement but in the course of the giving of the statement. The accused was not, in fact, induced by that utterance to think that by giving that statement he would gain any advantage of a temporal nature.

Again, as regards the allegation that Mrs Letchumi had told him 'you better tell the truth', Mrs Letchumi has, on re-examination, clarified that what she told him was that he should tell the truth. We are aware that some cases have held that utterances like, 'you better tell the truth' could amount to a threat or inducement. But we would make this observation. It seems clear to us that the interpreter uttered this advice in the course of recording the statement from the accused. We do not think that such words used in the circumstances of the present case are sufficient to suggest to the accused that he was going to gain any advantage by giving the statement. We held that this utterance does not render any of the three s 122(5) statements involuntary.

Turning to the allegation that no warning was administered to the accused prior to the commencement of recording of the s 122(5) statements, here we accept the evidence of Inspector Lim and Mrs Letchumi that a warning was administered to the accused when the statement was recorded on 3 December 1987. This is clearly shown on p 1 of P44I. Inspector Lim and Mrs Letchumi agreed that they did not administer the warning again on 4 and 5 December 1987. However, we do not think that is necessary as the further statements of 4 and 5 December 1987 were a continuation of the first statement.

There were in addition a couple of other minor allegations, eg he was refused a cigarette, thus causing hardship to the accused; he was given a cigarette at the end of the recording, thus suggesting inducement. In our view, these are entirely inconsequential and had no effect whatsoever on the voluntariness of the statements made by the accused. Accordingly, we admitted all the four statements.

In his s 122(6) statement the accused stated the following:

> I went to take my bath after returning from work. After the bath, I changed into my sarong and sat in the room to have a drink. We then decided to play English cards. Muniandy, Neelamegam, Rajah and myself took part in the game. As we were playing we also drank. Muniandy and I drank stout while the other two drank brandy. I then stopped playing and went to take my dinner. The others teased me for not continuing with the game. We usually joke and make fun of each other and as such I did not take it seriously. As I was helping myself with the food, Neelamegam approached me and was still joking and teasing me for backing out of the game. I then told Neelamegam not to shout. I jokingly told him that I would stab him with the knife which I had already held in my hand. I did not know what happened next and the next moment when I hugged him I realized that Neelamegam was bleeding and my hands were stained with blood. I then put him on my lap and I cried. I gave the knife to Rajah. Sometime later, the ambulance arrived and the ambulance staff consoled me. I gave my passport to the ambulance staff and was told to give it to the police. I admit committing the offence and I am remorseful for that. I did not do it deliberately. According to my conscience I know that I have not committed a serious crime. I am willing to accept the punishment. There was no animosity between Neelamegam and myself. I ask for leniency.

In his s 122(5) statement made on 3 December 1987 the following was said:

> On 30 November 1987 (Monday) at about 9pm, Megam and I finished our work. Megam is now the deceased. Both of us worked at the 'casting area' at the MRT Project No 305 worksite off Koh Sek Lim Road, Changi. Before going up to our cubicle which was 'B11' on the upper level of the two-level workmen's quarters located at the same worksite, we bought two packets of fresh chicken and one half-bottle of 3-star brandy (red wine) from a mobile provision supplier who drove a panel van. I contributed $5 and the deceased contributed $3 to pay for the brandy. The purchase of the chickens was on credit. We then went up to our cubicle. The deceased began to cook dinner and we also consumed the brandy. I was seated on the raised platform in the cubicle.
>
> 2 The cubicle was occupied by four of us, ie the deceased, myself and two other male Indians. They were Muniandy and Rajendran. Both of them also worked at the same worksite and we have stayed together for about one year. We also contributed equally to buy provisions and Muniandy took charge of the expenditure. Muniandy and the deceased also took charge of the cooking which was done inside our cubicle.
>
> 3 On the same day, sometime past 9pm, Muniandy and Rajendran also returned from their work. By the time they returned, the deceased and I had already consumed the bottle of brandy except for some in a glass which I was holding. Shortly, the deceased and Rajendran went for their bath at the bathroom which was located behind the canteen. The canteen was located next to our quarters. When both of them were gone, I gave $10 to Muniandy and asked him to buy some more liquor from the same provision supplier. I then left to take my bath. The deceased and Rajendran after their bath returned to the cubicle. I returned after my bath. I saw one can and one bottle of ABC stout and a half-bottle of 3-Star brandy in the cubicle.

The deceased and Rajendran suggested to play 'Throop' with English playing cards. It is an Indian card. Muniandy and I agreed and we sat on the floor to play the game. The cubicle was lit with three candles. We often play 'Throop' to pass time and no cash was used as stakes each time. On this occasion, we also consumed liquor while playing the game. Muniandy and I consumed the stout while Rajendran and the deceased consumed the brandy. In the game, I partnered Rajendran while the deceased paired off with Muniandy. After a few rounds, I decided to quit as I was feeling hungry. I then threw down the cards and called it quits. I then walked out of the cubicle and proceeded to the toilet to ease myself. Shortly I returned and as I entered the cubicle, the deceased remarked that I should not play cards anymore. I then replied to the deceased that if he stop, I would also stop and if he plays again, I also can play and while replying to the deceased, I was walking to the cooking platform as I wanted to take my food. The deceased also approached me from my rear. I saw a knife lying on a plate placed on the cooking platform. I took the knife with my right hand and at the same time turned to face the deceased who had come close. The deceased held me tight with both his hands around my body and I plunged the knife onto the left side of deceased's neck and at the same time, I held his head against my chest with my left hand. I cannot remember how many times did I stab the deceased. I saw my right hand spattered with blood and I heard Rajendran shouted to me to give him the knife. Immediately, I gave him the knife and at the same time, Rajendran punched me once on my lips. I saw blood oozing from the deceased's neck and I used my right palm to cover the wound to stop the bleeding. I also shouted to Rajendran not to beat me but to call for an ambulance. I was still holding the deceased then still on his feet. Rajendran and Muniandy then left the cubicle and I believed that they had gone to call for the ambulance. I could feel that the deceased's body was going soft and sagging onto the floor and finally, I laid him to rest on his back. Both my hands were still wrapped round deceased's neck and while doing so, my upper body also rested on the deceased's chest as I was in a prostrate position. I knew that the deceased was badly injured as he was motionless. I cried. I stabbed the deceased earlier because when he approached me I feared that he would harm me.

4 Shortly, someone tapped me on my back and asked me to move away. I looked up and saw the female ambulance officer. I then got up and the ambulance officer attended to the deceased. I also produced my passport to the ambulance officer who told me to hand it to the police. I then went out to the passage-way and the police arrived. I told one of the police officers that 'I killed him. Please arrest me'. Following this, I was handcuffed and led away. I was asked to sit at the rear of a police car parked near our quarters. I was only clad in a green sarong and it was stained with blood.

5 Later in the morning, I was taken to CID. Insp Lim then told me that I have been arrested for the murder of the deceased. I then realized that Megam had died. On 2 December 1987, I was charged in court for murder.

Dr Wee Keng Poh, the pathologist who performed an autopsy on the deceased, found that there were three stab wounds at the left shoulder near the base of the neck. The first wound, which penetrated the lung, was the fatal wound. The other two wounds were also potentially fatal as they cut the internal jugular veins; the person would die in a matter of minutes. No defensive or other injuries were found on the deceased. Dr Wee said that the condition of the three wounds were consistent with the stabbing as described by Rajendran. The wounds were fairly well coordinated.

Dr Wee Keng Poh said that taking into account the fact that at the time when the accused was brought to the Singapore General Hospital for a medical examination at 4.36am his blood alcohol level was 71mg of ethanol per 100 ml of blood, he was of the view that the accused's blood alcohol level at the time of the offence would be in the region of 120 to 170mg of ethanol per 100 ml of blood. On the assumption that the accused is an experienced drinker and relying on authorities which he produced in court, Dr Wee was of the opinion, taking into account the fact situation which was presented to him, that the alcohol effect on the accused would have been slight. Dr Wee also opined that for an experienced drinker the rate of oxidization in the body is higher. If there is food in the stomach then the absorption process will also be slowed down.

The prison psychiatrist, Dr Chan Kim Yew (PW15), examined the accused on 18 and 20 April 1990 at Changi Prison Hospital. From his examination he was of the opinion that the accused is not an alcoholic but an experienced social drinker. Based on deduction he would put the blood alcohol level of the accused at the time of the offence at between 150-170mg per 100 ml. At that level the accused would be under the influence of alcohol, which means that the accused would experience some euphoria, impairment of fine motor coordination and perhaps instability of mood. But his capacity to form intention would be intact. Thought process would only be affected at the level of 200 and above. Having perused P44, P45 and P46, he said that the details given therein show that the person has a good recollection of events. If the accused had been intoxicated to a high level then his mind would not have registered the events; there would have been nothing to commit to memory.

On P35, Dr Chan said that it shows someone who could give a good account of his own actions as well as others' though it also shows that the person seems to have amnesia for the critical period of 10 seconds or so when the stabbing took place. In his view it was most unlikely that the accused could have suffered from alcoholic amnesia for a brief moment like 10 seconds, as normally amnesia would extend from hours to days. In his view, in the context of the effect of alcohol consumption, actual behaviour is the best indicator to determine whether alcohol has affected the brain, and not so much the blood alcohol level. Looking at the wounds inflicted on the deceased, Dr Chan said that they were not random slashes or stabs. Considering the situation

as a whole he was of the view that the accused was unlikely to be deeply intoxicated.

At the close of the prosecution's case, counsel for the accused made a rather meek submission of no case to answer on the ground that the accused had no intention to kill the deceased. In our view, the prosecution has made out a case on the charge against the accused which, if unrebutted, would warrant his conviction. We accordingly called upon the accused to make his defence. The two courses were explained to him and he elected to give evidence on oath.

Defence

The accused's evidence is that on the day in question he returned to the cubicle between 8pm to 8.30pm. On his way he met Neelamegam who asked him to buy drinks from the mobile vendor. The accused gave Neelamegam $5 and together with some of his own money, Neelamegam bought a big bottle of 3-star Chinese wine. They returned to the cubicle and Neelamegam began to prepare food for cooking. In the meantime the accused took out two glasses and poured the 3-star wine into them. According to the accused, he drank more than half the bottle of that wine. Having consumed the wine, the accused threw the empty bottle into the rubbish pail. He then carried the pail out to dispose of the rubbish. Soon thereafter Muniandy and Rajendran returned. Sometime later, the accused handed $10 to Muniandy and asked him to buy a big bottle of ABC Stout and use the remainder of the money for whatever other drinks Muniandy might wish to purchase. Thereafter the accused went for his bath.

On his way back from the bath, he passed the canteen where some Thai workers were drinking. The accused said the Thai workers asked him to join them and they poured him a glass of drink which to him tasted like the 3-star wine. He consumed the drink and then returned to the cubicle. By then, Muniandy had bought a big bottle of ABC stout, a can of ABC stout and half a bottle of the 3-star wine. His friends then asked him to join them in a game of cards. The accused partnered Rajendran and Muniandy partnered Neelamegam. After one or two games, the accused got up and went to the cooking area and took two or three pieces of chicken from the pot to eat. Upon returning he found that the others had shuffled the cards without counting the points. He said that Neelamegam called him a drunkard and that Neelamegam accused him of behaving like that after drinks. They then stopped playing cards. The accused went out of the cubicle to ease himself at the staircase landing. He said he did not go down the staircase to the toilet because he was unsteady.

On his return to the cubicle Neelamegam said to the accused that the latter should not play cards any more; but the accused replied that he would play. The accused then wanted to eat and he took a plate which was on the top shelf. A knife was on the plate. He took the knife from the plate intending to insert it into the rack between the shelf and the wall which was the usual place where they kept their knives. At that moment he was not facing Neelamegam but the wall. He felt someone grabbing him from behind. He said that the next thing he knew was that he saw a blood-stained knife in his hand. He thought he had stabbed Neelamegam. He tried to catch hold of Neelamegam but could not do so as Neelamegam was slowly collapsing as the latter was bigger in size than the accused. Both of them then sat on the floor. The accused said that he had no intention whatsoever to inflict any injuries on Neelamegam as the four of them were like brothers.

The accused said that all that happened because he was drunk. That day he drank more than half a bottle of 3-star wine, then a glass of drink offered by the Thai workers and finally a big bottle of ABC stout. However, the accused maintained that he was and is not an alcoholic.

When he was confronted with P35, P44, P45 and P46 where he gave details of how the events happened that night, the accused explained that all those were events reconstructed and suggested to him by the Inspector and the interpreter. They would not believe him when he said that he did not know. As regards the identification of the knife, only one blood-stained knife was shown to him and he had to say that that was the knife.

When it was put to him that in all his statements to the police, he had never mentioned about the Thai workers offering him a glass of drink, he explained that the police never asked him about that. He admitted that the interpreter could have interpreted the warning to him when he gave the s 122(6) statement. But he could not remember whether he did say to Neelamegam that 'I will 'kuttu' you.' Neither could he remember whether or not he told Rajendran that 'your finger-prints are on the knife and you are involved.'

Assoc Professor Edmund Lee (DW2) of the Pharmacology Department of the National University of Singapore was called by the defence to establish the probable blood alcohol level in the accused at the time of the offence and on how that level of intoxication would have affected the accused. He used two methods. One is based on the quantity consumed by the accused as stated by the accused to the court. The second method is to work backwards based on the blood alcohol level in the accused at 4.36am the following morning. The first method assumes the accuracy of the quantity of alcohol

consumed as claimed by the accused. The second method is dependent primarily on one variable factor — the rate of oxidization and the range is between 15mg and 40mg per hour per 100 ml of blood. He said traditionally it was thought that for a normal person the rate would be 15mg to 20mg. But more recent studies show that the average rate is 23mg. In his opinion, the lowest blood alcohol level of the accused would be 150mg per 100 ml but it could be between 200mg to 260mg per 100 ml. However, Prof Lee admitted that it is a very rough sort of estimate. He agreed that the tables set out in standard works as to the effect of various levels of alcohol can at best only be a guide. Even with the same blood alcohol level, the degree of intoxication of each person will vary and one relevant factor is whether the person is an experienced or an inexperienced drinker.

The defence called Dr R Nagulendran, a consultant psychiatrist in private practice. In April 1990, Dr Nagulendran carried out a psychiatric assessment of the accused; he interviewed and examined the accused on three separate occasions. His assessment of the mental condition of the accused as set out in the psychiatric report (marked 'D2') is as follows:

(i) at the time of the incident, ie stabbing of the deceased, he was suffering from alcoholic intoxication;

(ii) his condition did not amount to unsoundness of mind; he was capable of knowing the nature of his act and what he did was wrong;

(iii) his condition also did not amount to abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury);

(iv) his condition, however, would have affected his ability to form the intention to commit the alleged offence.

In his evidence, Dr Nagulendran testified that at the time of the incident of stabbing he was suffering from amnesia which lasted for a short period; that accounted for his inability to remember what took place just before and during the stabbing. This amnesia is an alcoholic amnesia and lasted for only a short period which usually coincides with peak of the blood alcohol level. However, Dr Nagulendran said that at the time of the stabbing the accused had the basic intent to hurt; that when he was stabbing the deceased, he knew he was stabbing the deceased and was stabbing him at the left side of the neck, and that when he stabbed the deceased the second and third times, he knew he was doing it. On being questioned by the court whether he was in a state of intoxication when he inflicted the three stab wounds, Dr Nagulendran said:

> I think so. This is my opinion here. I think the state of intoxication is the one which probably caused his inability to control his actions, the impulsiveness and repeated actions which were done, to hurt the person. In other words, if he didn't drink that day, then it's a different type of situation. He was in an intoxicated state, his ability to control his actions was affected. They were impulsively done and there was inability to control his impulsive behaviour. And that is impaired by alcohol.

Consideration of the evidence and the defence

The main contention raised by the defence is that because of the high blood alcohol level in the accused at the time of the offence, he was incapable of forming any intention to inflict those injuries which were sufficient in the ordinary course of nature to cause the death of Neelamegam. The two pertinent provisions in this regard are ss 85(2) and 86(2) of the Penal Code. Section 85(2) provides that intoxication is a defence if at the time of the commission of the offence the accused did not know what he did was wrong or did not know what he was doing and he was, by reason of the intoxication, insane, temporarily or otherwise. Section 86(2) provides that 'intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence'. It has not been suggested by the defence that s 85(2) applies in this case.

As would be apparent from what we said above, there is no objective evidence as to the actual quantity of alcoholic drinks consumed by the accused. We have, however, the evidence of the accused who claims that he drank more than half a bottle of the 3-star Chinese wine at about 8.30pm to 9pm that evening; a glass of 3-star Chinese wine offered to him by the Thai workers at about 10pm; and a big bottle of the ABC stout between 10.30pm to 11.30pm. But we do know that five hours after the stabbing, the blood alcohol level in the accused was established to be 71mg of ethanol per 100 ml of blood. Working backwards and depending on the rate of oxidization, the expert witnesses of both the prosecution and the defence have shown that the blood level of the accused at the time of the stabbing could be anything between 150-260mg of ethanol per 100 ml of blood.

In any event, from the evidence of the experts, the blood alcohol level itself can never be conclusive to determine the degree of intoxication of the accused. Different people react differently to the same blood alcohol level. It makes a great difference whether the person is or is not an experienced drinker. In our judgment, and here we accept the opinion of Dr Chan (PW15), the more reliable indicator of the state of mind of the accused must be the conduct of the accused immediately prior to and after the offence. In this regard we have the evidence of both Rajendran and

Muniandy, as well as the evidence of the ambulance attendant and PC Sim. Their evidence is certainly more reliable than that of the accused and we accept their evidence on this aspect. Rajendran and Muniandy were the friends of both the accused and the deceased and and we can see no reason whey they would not but tell the truth.

As we see it, the following circumstances are pertinent. The accused questioned the point-counting done by Neelamegam; he repeatedly asked why Neelamegam shuffled the cards when he went to take food; even after he came back from urinating he repeatedly harped on the question why Neelamegam shuffled the cards; the heated arguments ensued between the accused and Neelamegam; the utterance by the accused that he would 'kuttu' the deceased; the accused remembers that after the stabbing he could not hold on to Neelamegam and the latter was sagging to the floor; the accused tried to stop the blood flow from the wounds by pressing against them; he lay by the side of the deceased after realizing that the deceased was seriously or fatally injured; his utterance to Rajendran that his finger prints were on the knife and he was involved; there was no slurring of speech; there was no obvious unsteadiness on the part of the accused, though the ambulance attendant said that when the accused got up from the lying position he was swaying from side-to-side. All these, in our judgment, clearly show a person who was very conscious of his surroundings and who knew what he was saying or doing.

The evidence of the accused was that during that fleeting moment when the three stab wounds were inflicted, he temporarily lost consciousness. He could not remember what happened.

Dr Chan was of the opinion that it was most unlikely that the accused could have amnesia for just 10 seconds or thereabouts. He said that by its very nature alcoholic amnesia would extend from some hours into days. On the other hand, Dr Nagulendran expressed the view that the accused was suffering from alcoholic amnesia which lasted for a short period; that the accused was in a state of alcoholic intoxication; that he did not have the 'specific intention' to kill but had the 'basic intention' to hurt and he had the intention to cause the stab wounds. While the accused in his s 122(6) statement also said he did not know what happened he was able to give a fairly detailed account in his s 122(5) statements: exhs P44, P45 and P46. We find that this so-called amnesia was just a lame excuse on his part to mitigate the wrong he had done. It was an attempt to put up a defence that he was not acting voluntarily. As Dr Nagulendran had said, the accused had the intention to cause the stab wounds. We find that the accused knew what he was doing notwithstanding the fact that at that moment he was under the influence of alcohol. It is irrelevant that the accused did not know that the injuries he inflicted would in the ordinary course of nature cause death; the test is objective.

The next question we have to consider is whether the accused has brought himself within any of the exceptions to s 300 of the Penal Code. Counsel for the accused submitted that this is a case where exceptions 1, 2 and 4 apply.

Even on the evidence of the accused himself we find that exception 1 (grave and sudden provocation) cannot apply. The accused and the deceased had been arguing and quarrelling for some time before the fatal stabs took place. The quarrel had obviously become quite violent as the parties used words such as 'kuttu'. They were both challenging each other. We do not see how, on the facts, the provocation, if any, could be considered to be 'sudden'. Both parties worked themselves up to such a high pitch that a physical confrontation became inevitable.

Turning to exception 2 — exceeding the right of private defence — again we do not think this applies. The two were quarrelling which quarrel gradually became more heated. They were both poised for a physical confrontation which in fact occurred. This is not a case where one party for no rhyme or reason assaults another giving that other a right of private defence.

Then there is exception 4, which provides that culpable homicide is not murder if 'it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.' On the evidence before us, it is clear that the fight occurred suddenly as the accused and Neelamegam quarrelled. The quarrel arose suddenly out of an event relating to the shuffling of cards by Neelamegam allegedly before points were counted. There was no question of there being premeditation on the part of any party. To invoke this exception it is immaterial which party offers the provocation or commits the first assault.

Muniandy did not see who started the fight. He said he saw the accused take the knife from the rack and he advised the accused to put it back. He did not, however, pay attention whether the accused heeded his advice. He was then eating, quite oblivious to the quarrel that was then raging between the accused and Neelamegam. He only turned his head in the direction of the accused and Neelamegam when Rajendran shouted. At that point, the accused was holding Neelamegam's head by his left arm and his right hand was holding a knife. Rajendran was trying to wrench the knife from him. Muniandy did not see any stabbing.

Rajendran's evidence on this aspect was that after the accused said, 'I will kuttu you', and Neelamegam replied, 'Can you kuttu me?' or words to that effect, he turned to look at the two of them. He saw the accused move one step backwards and take a knife from the rack. The accused then moved one step forward and caught hold of Neelamegam's forehead with his left arm and stabbed Neelamegam at the shoulder region close to the neck. When Rajendran was asked if, before the accused took the knife, Neelamegam moved towards the accused, he answered 'no' and said that the deceased was standing still. When defence counsel confronted him with his statement to the police, which was tendered at the preliminary inquiry, where he stated:

> Both of them moved towards each other as they argued. As the deceased drew closer, I saw Ramasamy retreating back and he then grabbed hold of a knife from the knife rack ...

Rajendran said that he did not see Neelamegam go close to the accused; Neelamegam remained where he was. When pressed further, Rajendran agreed that it was possible that before he turned to look at them, Neelamegam had moved closed to the accused.

As the statement to the police tendered at the preliminary inquiry was given soon after the incident, it stands no reason that what he stated therein is more likely to be accurate than what he now tells the court some two years later.

This leaves us with two points where the evidence of the accused is at variance with that of the prosecution — first, the accused said he was facing the wall when he felt someone grabbing him from behind whereas Rajendran denied that Neelamegam grabbed the accused from behind; second, the accused said he took the knife from a plate on the upper rack whereas Rajendran said the accused took the knife from the knife rack. While these are important points, we do not think they are critical for determining whether exception 4 applies. It seems to us quite clear that immediately prior to the stabbing the quarrel had reached an explosive stage where one party talked about 'kuttu' and the other dared the former to do so. Both Muniandy and Rajendran told the court that Neelamegam was much bigger than the accused and in a free fight the accused would lose. In all probability, Neelamegam did rush forward and grabbed the accused who turned round and used the knife as a weapon to 'kuttu' the deceased. Both of them were engaged in a fight.

In all the circumstances we find that this is a case where exception 4 applies. We do not think, bearing in mind that Neelamegam was challenging the accused to 'kuttu' him and engaging in a fight with the accused, that it could be said that the accused had taken any undue advantage or acted in a cruel or unusual manner. In the context, we find that the accused used the word 'kuttu' to mean 'stab'. It could not have meant 'poke' or 'punch' because it was obvious that the accused was no match for the deceased if he was going to use only his bare hands.

This is an unfortunate incident. The two of them, who were obviously fellow workers, and who shared a cubicle with two others, allowed their passion to have the better of them. To our mind, this was due in no small part to the liquor they had consumed. A tiny misunderstanding was blown out of all proportions. The two had quarrelled before but their previous quarrels had apparently never reached the nasty stage like the present instance where physical violence was resorted to.

Accordingly, we find the accused guilty of the offence of culpable homicide not amounting to murder.

Order accordingly.

Solicitors: *Shyam & Chew.*

Reported by *S Surenthiraraj*

Lee Kuan Yew v Jeyaretnam JB

HIGH COURT (SINGAPORE) — MOTION IN SUIT NO 1754 OF 1988
YONG PUNG HOW J
17 AUGUST 1990

Civil Procedure — Stay of execution — Strong grounds for appeal — Whether ground for granting stay of execution — Special circumstances

The defendant had been ordered to pay the plaintiff a large sum of damages for slander. The plaintiff had demanded payment of the sum and refused to agree to a stay of execution. The defendant applied to court for a stay of execution on the grounds that he had strong grounds for his appeal against the original decision.

Held, dismissing the defendant's application:

(1) An appeal does not of itself operate as a stay of execution. The court has power to grant a stay at its discretion, which had to be exercised in accordance with established principles.

(2) Judgment against the defendant was given after a full trial. The court should not deprive a successful plaintiff of the fruits of his victory pending an appeal unless there were special circumstances to justify the granting of a stay.

[*Editorial Note:* The defendant has appealed to the Court of Appeal vide Civil Appeal No 65 of 1990.]

Cases referred to

1 *Serangoon Garden Estate Ltd* v *Ang Keng* [1953] MLJ 116 (refd)
2 *Syarikat Berpakat* v *Lim Kai Kok* [1983] 1 MLJ 406 (refd)